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OFFICE OF PETITIONS

In re Application :
George V. Guyan et al. :
Application No. 09/305,146 : DECISION ON APPLICATION
Filed: May 4, 1999 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. **10022/252** :

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b) filed November 22, 2010. Applicant requests that the determination of patent term adjustment be corrected from 1118 days to 1141 days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

On October 19, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 1118 days. The instant application for patent term adjustment was timely filed¹ on or before payment of the issue fee.

Applicants argue that the Patent Office erroneously assigned a filing date of January 9, 2003 to the Request for Continued Examination (RCE) filed on October 7, 2002 and as a result, a period of adjustment pursuant to 37 C.F.R. § 1.703(a)(3) should be increased by 39 days.

A review of the application history reveals that applicants are correct. The Office incorrectly entered the date of receipt of the RCE in the PTA Calculations as January 9, 2003 instead of October 7, 2002. Thus, the date of October 7, 2002, not January 9, 2003, should have been used for the purposes of calculating patent term adjustment.

In view thereof, in response to the Office Action mailed May 6, 2002, a delay of 62 days on the part of Applicants should be calculated for the period from August 6, 2002 to October 7, 2002, pursuant to 37 CFR 1.704(b). Thus 156 days will be removed and 62 days will be entered. As well, for the period October 7, 2002 to March 18, 2003, when the non-Final Office Action was mailed, a period of 39 days has been entered for Examination delay pursuant to 37 CFR 1.702,(a)(2).

¹ PALM records indicate that the issue fee was paid on November 22, 2010.

Applicants argue also that the after the filing of a response on June 19, 2003, not June 18, 2003, to a non-Final Office Action mailed March 18, 2003, the period of adjustment pursuant to 37 C.F.R. § 1.703(a)(2) is the number of days in the period beginning on the day ("the four month date") after that date that is four months after the date a reply in compliance with 37 CFR § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. § 132, or a notice of allowance under 35 U.S.C. § 151, whichever comes first. Applicants argue the four month date should have been October 19, 2003 not October 18, 2003 as calculated by the Office and as such, the period of delay should be 25 days and not 26 days. Thus 26 days is being removed and 25 days is being entered for the delay pursuant to 37 CFR 1.702(a)(2).

Applicants argue that the Patent Office has calculated two hundred forty eight (248) days of delay for failing to mail the Examiner's Answer by March 13, 2007 and that instead, there should be a delay of one hundred thirty nine (139) days on the part of the Patent Office since the delay is incorrectly based on the July 24, 2006 filing of the non-compliant Appeal Brief. Thus, the Patent Office has calculated 109 days of too much delay on its part regarding this matter.

There is no calculation of 248 days in the record and thus applicants' argument is not supported. However, a review of the record reveals calculations for a 1140 day period of Office delay, beginning on April 27, 2006 with the filing of the Notice of Appeal and ending on June 9, 2009 and, a 2 day period of delay accorded for Office delay from July 28, 2006 to July 30, 2006 has been entered. The Office erred in according both 1140 days of adjustment for Office delay in issuing a Board decision, pursuant to 37 CFR 1.703(e) and 2 days of adjustment for Office delay in issuing an Examiner's answer, pursuant to 37 CFR 1.703(a)(3) 2007. This period totally overlaps with the Office delay in issuing the Board of Patent Appeals and Interferences decision, which begins on April 27, 2006 and ends on June 9, 2009. Accordingly, only a period of adjustment of 1140 days should have been entered. The period of adjustment of 2 days is being removed.

Thus the patent term adjustment at the time the Notice of Allowance was mailed was 1002 days (96 "A delay" days + 1140 "C delay" days - 234 Applicant delay days), not 1141 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is ONE THOUSAND TWO (**1002**) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at

the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

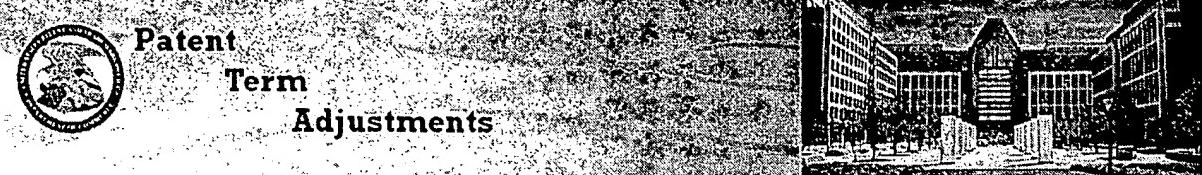
The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PALM Screen


[PTA/PTE Information](#)
[Patent Term Adjustment](#)
[Patent Term Extension](#)

 Application Number*: **09305146**

[Explanation of PTA Calculation](#)
[Explanation of PTE Calculation](#)

PTA Calculations for Application: 09305146

Application Filing Date		05/04/1999	Overlapping Days Between (A and B) or (A and C): 0	
Issue Date of Patent:			Non-Overlapping USPTO Delays: 1200	
A Delays:	60		PTO Manual Adjustment:	130
B Delays:	0		Applicant Delay (APPL):	328
C Delays:	1140		Total PTA (days):	1002

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
235	06/09/2011		P028	Adjustment of PTA Calculation by PTO	62	0	
234	06/09/2011		P028	Adjustment of PTA Calculation by PTO	156	0	
233	06/09/2011		P028	Adjustment of PTA Calculation by PTO	39	0	
232	06/09/2011		P028	Adjustment of PTA Calculation by PTO	2	0	
231	06/09/2011		P028	Adjustment of PTA Calculation by PTO	25	0	
230	06/09/2011		P028	Adjustment of PTA Calculation by PTO	26	0	
206	03/07/2011		MN=.	Mail Notice of Allowance	0	0	
205	03/04/2011		IREV	Issue Revision Completed	0	0	
204	03/04/2011		DVER	Document Verification	0	0	
203	03/04/2011		N/=.	Notice of Allowance Data Verification Completed	0	0	
202	03/02/2011		CNTA	Allowability Notice	0	0	
197	02/28/2011		ABN9	Disposal for a RCE / CPA / R129	0	0	
196	02/22/2011		MP006	Mail-Record Petition Decision of Granted to Withdraw from Issue	0	0	
195	02/22/2011		P006	Record Petition Decision of Granted to Withdraw from Issue	0	0	
193	02/22/2011		TCPB	Printer Rush- No mailing	0	0	
201	02/18/2011		IDSC	Information Disclosure Statement considered	0	0	
200	02/18/2011		RCAP	Reference capture on IDS	0	0	
199	02/18/2011		M844	Information Disclosure Statement (IDS) Filed	0	0	
198	02/18/2011		RCEX	Request for Continued Examination (RCE)	0	0	
194	02/18/2011		PET.	Petition Entered	0	0	
192	02/18/2011		WIDS	Information Disclosure Statement (IDS) Filed	0	0	
191	02/18/2011		BRCE	Workflow - Request for RCE - Begin	0	0	
190	11/24/2010		PILS	Application Is Considered Ready for Issue	0	0	
189	11/22/2010		N084	Issue Fee Payment Verified	0	0	
188	11/22/2010		PET2	Petition Entered	0	0	
187	11/22/2010		IFEE	Issue Fee Payment Received	0	0	
186	10/22/2010		EIDC	Export to Initial Data Capture	0	0	
185	10/19/2010		MN=.	Mail Notice of Allowance	0	0	
184	10/19/2010		IREV	Issue Revision Completed	0	0	
183	10/19/2010		DVER	Document Verification	0	0	
182	10/19/2010		N/=.	Notice of Allowance Data Verification Completed	0	0	
181	10/19/2010		CNTA	Allowability Notice	0	0	
172	10/15/2010		ABN9	Disposal for a RCE / CPA / R129	0	0	
177	10/14/2010		IDSC	Information Disclosure Statement considered	0	0	
176	10/14/2010		WIDS	Information Disclosure Statement (IDS) Filed	0	0	
175	10/14/2010		RCAP	Reference capture on IDS	0	0	
174	10/14/2010		M844	Information Disclosure Statement (IDS) Filed	0	0	
173	10/14/2010		RCEX	Request for Continued Examination (RCE)	0	0	
171	10/14/2010		BRCE	Workflow - Request for RCE - Begin	0	0	
170	07/20/2010		EIDC	Export to Initial Data Capture	0	0	
169	07/15/2010		MN=.	Mail Notice of Allowance	0	0	
168	07/15/2010		IREV	Issue Revision Completed	0	0	
167	07/15/2010		DVER	Document Verification	0	0	
166	07/14/2010		N/=.	Notice of Allowance Data Verification Completed	0	0	
165	07/14/2010		CNTA	Allowability Notice	0	0	
159	07/08/2010		ABN9	Disposal for a RCE / CPA / R129	0	0	
164	07/01/2010		IDSC	Information Disclosure Statement considered	0	0	
163	07/01/2010		IDSC	Information Disclosure Statement considered	0	0	
162	07/01/2010		WIDS	Information Disclosure Statement (IDS) Filed	0	0	
161	07/01/2010		M844	Information Disclosure Statement (IDS) Filed	0	0	
160	07/01/2010		RCEX	Request for Continued Examination (RCE)	0	0	
158	07/01/2010		WIDS	Information Disclosure Statement (IDS) Filed	0	0	

157	07/01/2010	BRCE	Workflow - Request for RCE - Begin	0
156	04/05/2010	EIDC	Export to Initial Data Capture	0
155	04/02/2010	MN/=.	Mail Notice of Allowance	0
154	03/12/2010	N/=.	Notice of Allowance Data Verification Completed	0
153	03/08/2010	IREV	Issue Revision Completed	0
152	03/08/2010	DVER	Document Verification	0
151	03/08/2010	CNTA	Allowability Notice	0
146	03/01/2010	ABN9	Disposal for a RCE / CPA / R129	0
150	02/02/2010	IDSC	Information Disclosure Statement considered	0
149	02/02/2010	RCAP	Reference capture on IDS	0
148	02/02/2010	M844	Information Disclosure Statement (IDS) Filed	0
147	02/02/2010	RCEX	Request for Continued Examination (RCE)	0
144	02/02/2010	WIDS	Information Disclosure Statement (IDS) Filed	0
143	02/02/2010	BRCE	Workflow - Request for RCE - Begin	0
142	11/18/2009	FIDC	Finished Initial Data Capture	0
141	11/06/2009	EIDC	Export to Initial Data Capture	0
140	11/03/2009	MN/=.	Mail Notice of Allowance	0
139	11/02/2009	IREV	Issue Revision Completed	0
138	11/02/2009	DVER	Document Verification	0
137	10/30/2009	N/=.	Notice of Allowance Data Verification Completed	0
136	10/30/2009	CNTA	Allowability Notice	0
132	10/13/2009	FWDX	Date Forwarded to Examiner	0
130	10/13/2009	ABN9	Disposal for a RCE / CPA / R129	0
126	09/04/2009	EIDC	Export to Initial Data Capture	0
135	09/03/2009	IDSC	Information Disclosure Statement considered	0
134	09/03/2009	RCAP	Reference capture on IDS	0
133	09/03/2009	M844	Information Disclosure Statement (IDS) Filed	0
131	09/03/2009	RCEX	Request for Continued Examination (RCE)	0
128	09/03/2009	WIDS	Information Disclosure Statement (IDS) Filed	0
127	09/03/2009	BRCE	Workflow - Request for RCE - Begin	0
125	09/02/2009	MN/=.	Mail Notice of Allowance	0
124	08/18/2009	IREV	Issue Revision Completed	0
123	08/18/2009	DVER	Document Verification	0
122	08/18/2009	N/=.	Notice of Allowance Data Verification Completed	0
121	08/17/2009	CNTA	Allowability Notice	0
120	06/09/2009	04/27/2006 MAPDR	Mail BPAI Decision on Appeal - Reversed	1140
119	06/09/2009	APDR	BPAI Decision - Examiner Reversed	79
118	03/31/2009	DOCK	Case Docketed to Examiner in GAU	0
116	09/24/2008	AP_DK_M	Docketing Notice Mailed to Appellant	0
115	09/23/2008	APAS	Assignment of Appeal Number	0
113	08/20/2008	DOCK	Case Docketed to Examiner in GAU	0
112	08/14/2008	APWD	Appeal Awaiting BPAI Docketing	0
111	03/11/2008	DOCK	Case Docketed to Examiner in GAU	0
110	02/11/2008	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
114	02/05/2008	IDSC	Information Disclosure Statement considered	0
109	02/05/2008	10/01/2007 EIDS.	Electronic Information Disclosure Statement	127
108	02/05/2008	WIDS	Information Disclosure Statement (IDS) Filed	102
107	12/17/2007	MRBNE	Mail Reply Brief Noted by Examiner	0
106	12/15/2007	RBNE	Reply Brief Noted by Examiner	0
103	10/18/2007	FWDX	Date Forwarded to Examiner	0
102	10/01/2007	APRB	Reply Brief Filed	0
101	08/30/2007	PACC	Exam. Ans. Review Complete	0
96	07/30/2007	07/28/2007 MAPEA	Mail Examiner's Answer	2
95	07/23/2007	APEA	Examiner's Answer to Appeal Brief	93
94	05/15/2007	FWDX	Date Forwarded to Examiner	0
93	03/28/2007	AP.B	Appeal Brief Filed	0
92	03/09/2007	APBD	Notice -- Defective Appeal Brief	0
90	12/18/2006	APBR	Appeal Brief Review Complete	0
89	12/18/2006	FWDX	Date Forwarded to Examiner	0
91	11/20/2006	IDSC	Information Disclosure Statement considered	0
87	11/20/2006	RCAP	Reference capture on IDS	0
86.7	11/20/2006	M844	Information Disclosure Statement (IDS) Filed	0
86	11/20/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
88.1	11/13/2006	APBI	Defective / Incomplete Appeal Brief Filed	0
88	11/13/2006	AP.B	Appeal Brief Filed	0
85	10/13/2006	APBD	Notice -- Defective Appeal Brief	0
84	08/05/2006	FWDX	Date Forwarded to Examiner	0
83.1	07/24/2006	APBI	Defective / Incomplete Appeal Brief Filed	0
83	07/24/2006	AP.B	Appeal Brief Filed	0
82	06/22/2006	MAPCP	Mail Appeals conf. Proceed to BPAI	0
81	06/20/2006	APCP	Pre-Appeals Conference Decision - Proceed to BPAI	0
80	04/27/2006	AP.C	Request for Pre-Appeal Conference Filed	0
79	04/27/2006	N/AP	Notice of Appeal Filed	0
75	02/24/2006	MCTFR	Mail Final Rejection (PTOL - 326)	0
74	02/21/2006	CTFR	Final Rejection	0
73	12/07/2005	FWDX	Date Forwarded to Examiner	0
72	11/22/2005	A...	Response after Non-Final Action	0
71	10/06/2005	DOCK	Case Docketed to Examiner in GAU	0
70	08/23/2005	MCTNF	Mail Non-Final Rejection	0
69	08/22/2005	CTNF	Non-Final Rejection	0
68	06/07/2005	FWDX	Date Forwarded to Examiner	0
66	06/07/2005	ABN9	Disposal for a RCE / CPA / R129	0
67	05/31/2005	04/21/2005 RCEX	Request for Continued Examination (RCE)	40
65	05/31/2005	XT/G	Request for Extension of Time - Granted	59
64	05/31/2005	BRCE	Workflow - Request for RCE - Begin	0
63	04/28/2005	MCTAV	Mail Advisory Action (PTOL - 303)	0
62	04/27/2005	CTAV	Advisory Action (PTOL-303)	0
61	03/29/2005	FWDX	Date Forwarded to Examiner	0
60	03/21/2005	A.NE	Amendment after Final Rejection	0

59	01/21/2005	12/20/2004 MCTFR	Mail Final Rejection (PTOL - 326)	<u>32</u>	56
58	01/18/2005	CTFR	Final Rejection	0	0
57	11/17/2004	FWDX	Date Forwarded to Examiner	0	0
55	10/13/2004	DOCK	Case Docketed to Examiner in GAU	0	0
56	08/20/2004	A...	Response after Non-Final Action	0	0
54	08/20/2004	WAMD	Workflow incoming amendment IFW	0	0
53	05/20/2004	MCTNF	Mail Non-Final Rejection	0	0
52	05/17/2004	CTNF	Non-Final Rejection	0	0
51	03/10/2004	FWDX	Date Forwarded to Examiner	0	0
49	03/10/2004	FWDX	Date Forwarded to Examiner	0	0
47	03/10/2004	ABN9	Disposal for a RCE / CPA / R129	0	0
50	02/17/2004	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	0	0
48	02/17/2004	02/13/2004 RCEX	Request for Continued Examination (RCE)	<u>4</u>	45
46	02/17/2004	BRCE	Workflow - Request for RCE - Begin	0	0
45	11/13/2003	10/18/2003 MCTFR	Mail Final Rejection (PTOL - 326)	<u>26</u>	42
44	11/13/2003	CTFR	Final Rejection	0	0
43	09/15/2003	FWDX	Date Forwarded to Examiner	0	0
105	06/19/2003	IDSC	Information Disclosure Statement considered	0	0
100	06/19/2003	06/18/2003 M844	Information Disclosure Statement (IDS) Filed	<u>1</u>	42
99	06/19/2003	WIDS	Information Disclosure Statement (IDS) Filed	0	0
42	06/18/2003	A...	Response after Non-Final Action	0	0
41	03/18/2003	MCTNF	Mail Non-Final Rejection	0	0
40	03/10/2003	CTNF	Non-Final Rejection	0	0
38	01/14/2003	FWDX	Date Forwarded to Examiner	0	0
36	01/14/2003	FWDX	Date Forwarded to Examiner	0	0
34	01/14/2003	ABN9	Disposal for RCE / CPA / R129	0	0
39.7	01/09/2003	01/09/2003 M844	Information Disclosure Statement (IDS) Filed	35	0
39	01/09/2003	WIDS	Information Disclosure Statement (IDS) Filed	0	0
37	01/09/2003	SA..	Supplemental Response	0	0
35	01/09/2003	08/06/2002 RCEX	Request for Continued Examination (RCE)	<u>156</u>	24
33	01/09/2003	XT/G	Request for Extension of Time - Granted	0	0
32	01/09/2003	BRCE	Workflow - Request for RCE - Begin	0	0
31	07/23/2002	MCTAV	Mail Advisory Action (PTOL - 303)	0	0
29	07/23/2002	MCTAV	Mail Advisory Action (PTOL - 303)	0	0
30	07/22/2002	CTAV	Advisory Action (PTOL-303)	0	0
28	07/22/2002	CTAV	Advisory Action (PTOL-303)	0	0
27	07/19/2002	FWDX	Date Forwarded to Examiner	0	0
26	07/03/2002	A.NE	Amendment after Final Rejection	0	0
25	06/03/2002	DOCK	Case Docketed to Examiner in GAU	0	0
24	05/06/2002	MCTFR	Mail Final Rejection (PTOL - 326)	0	0
23	05/06/2002	CTFR	Final Rejection	0	0
21	04/25/2002	FWDX	Date Forwarded to Examiner	0	0
19	04/25/2002	ABN9	Disposal for RCE / CPA / R129	0	0
17	04/23/2002	DOCK	Case Docketed to Examiner in GAU	0	0
22	04/19/2002	A.PE	Preliminary Amendment	0	0
20	04/19/2002	ACPA	Continuing Prosecution Application - Continuation (ACPA)	0	0
18	04/19/2002	XT/G	Request for Extension of Time - Granted	0	0
16	04/19/2002	BRCE	Workflow - Request for RCE - Begin	0	0

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